

MV 95-8

Tax Type: MOTOR VEHICLE USE TAX

Issue: Medicines & Medical Appliance Exemption (Low Rate)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

XXXXXX)
)
 v.)
)
Department of Revenue) Mimi Brin
State of Illinois) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX and XXXXX, of XXXXX, for Claimant, XXXXX

SYNOPSIS: The Claimant herein, XXXXX (hereinafter referred to as the "Claimant" or "XXXXX") purchased a mobile lithotripter (hereinafter referred to as the "Lithotripter") in September, 1990 and paid to the Illinois Department of Revenue (hereinafter referred to as the "Department") Motor Vehicle Use Tax (hereinafter referred to as the "Tax") on this unit in the amount of \$126,000. This represents 7% of the purchase price. In June, 1993, XXXXX filed a Claim for Credit (hereinafter referred to as the "Claim") with the Department pertaining to this purchase and payment, claiming that, as a 'medical appliance', the appropriate use tax payment for the lithotripter was the statutorily provided for reduced tax rate of 1%.

The matter came to hearing in May, 1994. A urologist, Dr. XXXXX, testified on Claimant's behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Claimant.

FINDINGS OF FACT:

1. Claimant paid to the Illinois Department of Revenue \$126,000.00 in Motor Vehicle Use Tax on its purchase of a mobile XXXXX Lithostar

Lithotripter in September, 1990. Cl. Ex. No. 2, 3 The purchase price of the lithotripter was \$1,800,000.00. Cl. Ex. No. 2

2. In July, 1993, it filed a Claim for Credit with the Department in the amount of \$108,000.00 for this purchase, claiming that the lithotripter qualifies as a "medical appliance" and qualifies for the statutorily provided for reduced rate of tax. Dept. Ex. No. 1

3. The Department denied the claim and the matter was timely protested. Dept. Ex. No. 1

4. Dr. XXXXX is a physician with a specialty in urology. Tr. pp. 12, 32-33

5. He is the medical director for the lithotripter and uses it himself to treat patients. Tr. p. 13

6. Kidney stones are an accumulation of crystals in the human kidney, which causes severe pain, infection, and if not removed, can lead to the total destruction of the body's renal system. Tr. pp. 18, 38

7. The existence of a kidney stone in a human kidney is not a normal condition. Tr. p. 35

8. A kidney does not function properly with a kidney stone present. Tr. pp.. 38, 39

9. The lithotripter at issue is only used for the purpose of breaking up the kidney stone in a non-invasive manner, so that the body can flush the smaller stone particles through the renal system, thus enabling the kidney to resume its proper bodily function. Tr. pp. 16, 19, 38, 39-40

10. The only patients treated by the lithotripter are ones already diagnosed with kidney stone problems. Tr. p. 35

11. This lithotripter is housed in a mobile trailer (hereinafter referred to as the "Trailer") which contains and moves this unit, thus allowing physicians to treat patients where there is no ready accessibility to stationary hospital facilities. Tr. p. 16

12. The trailer also contains, inter alia,: 1) monitoring equipment such as a respiratory monitor and an electrocardiogram monitor, which do not function to destroy the kidney stone (Tr. p. 31); and, 2) enhancements to the lithotripter patient table for the accommodation of diagnostic elements for the development of hard copy x-rays (Tr. pp. 49, 52-53, 56-60).

13. The value of the trailer portion of the purchase is \$346,500.00.
Cl. Ex. 8

14. The value of the monitoring equipment and the diagnostic enhancements is \$200,000.00.

Claimant stipulates to the above recited facts:

XXXXX

By: _____

CONCLUSIONS OF LAW: Claimant's position is that, although there is a tax on the privilege of using, in this State, tangible personal property, this equipment falls within a statutory exemption which read, at the time of the purchase and payment of the tax, in pertinent part:

However, with respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%.

35 ILCS 105/3-10. The statute does not define "medical appliance" and does not appear to limit such, except in the case of almost all diagnostics, which are not exempt except for certain diagnostics for diabetics. Id.

However, at the time of the purchase and the payment of the tax, the

Department's regulation pertaining to this exemption defined "medical appliance" and stated, in pertinent part:

(2) A medical appliance is an item which is intended by the maker to correct any functioning part of the body or which is used as a substitute for any functioning part of the body, such as artificial limbs, crutches, wheelchairs, stretchers, hearing aids, corrective eyeglasses, dental prostheses, and sterile cotton, bandages and band-aids. The term "medical appliance" also includes testing equipment used by an individual to test his or her own medical condition.

86 Ill. Adm. Code 130.310(c)(2)1

Dr. XXXXX testimony, that the existence of a kidney stone in a human kidney (a functioning part of the body) is an abnormal condition, preventing the kidney from functioning properly, is uncontroverted. As a result of this testimony, there is no question but that the lithotripter corrects a functioning part of the body, thus qualifying it as a "medical appliance" as defined by the Department regulation in effect at the time of the purchase and payment of the tax.

The exemption, however, does not apply to the trailer portion of XXXXX' purchase. The primary purpose of the trailer is to make the ordinarily stationary lithotripter mobile for use away from hospitals. And, because the lithotripter can function as a "medical appliance" without the trailer and because the trailer is not, itself, involved in the corrective process, the exemption from the application of the standard tax rate does not apply to it. XXXXX submitted evidence separating the cost of the trailer from the total cost of the lithotripter. I recommend, therefore, that XXXXX' claim for credit be denied for the amount due on the trailer.

Another issue concerns the special monitors placed into the trailer for use during the kidney stone destroying procedures, certain diagnostics augmenting the lithotripter and special upgrades to the trailer. These, also, do not correct any functioning part of the body and do not qualify

for the exemption. XXXXX represents that the monitors, diagnostics and upgrades are valued at \$200,000.00. I recommend, therefore, that XXXXX' claim for credit be denied for the amount due on these items.

Based upon the above, it is my recommendation that the claim for credit at issue herein be reduced by the amounts for the trailer and for the diagnostics, monitors trailer upgrades, and that the claim be granted for the remainder.

Mimi Brin
Administrative Law Judge

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1. The key to the conclusion reached in this case lies in the fact that the Department's regulation prior to January 13, 1992 was phrased in the disjunctive, thereby creating the inescapable result that "medical appliances" in the opinion of the Department was an either/or proposition. That is, a medical appliance was one which corrected a functioning (sic) part of the body or one which substituted for such. It appears certain that the words "correct" and "substitute" were intended to be synonymous, but the plain reading of the regulation as drafted dictates otherwise. This anomaly has been resolved with the January, 1992 amendment to the regulation which clarifies the situation.